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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

VAN D. MUELLER and JUNE E. NOYES,

Petitioners,

—v.—

CLYDE E. ALLEN, JR., DENNIS J. BERTHIAUME, KAREN F. BERTHIAUME, THOMAS W. DZIK, MARY J. DZIK, EDWARD F. FUJAN, JOLEEN A. FUJAN, BRENDA B. BECKER, RICHARD C. HOLLINGSWORTH, MARJORIE HOLLINGSWORTH, ROGER DEHAAN and DOROTHY DEHAAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Does a Minnesota statute which provides deductions of up to $500 and $700 per child for tuition, textbook and transportation payments made by parents of children attending elementary and secondary schools violate the Establishment Clause when it: (1) is disproportionately available to parents of children attending sectarian schools; (2) constitutes an unrestricted subsidy to sectarian education; (3) provides no mechanism to ensure that deductions are not taken for sectarian activity, and would require excessive entanglement if such assurance were attempted; and (4) was not motivated by a secular purpose?

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OPINIONS BELOW

The District Court's opinion below is reported at 514 F. Supp. 998. The opinion of the Court of Appeals is reported at 676 F. 2d 1195. Each is also reproduced in the appendix to the Petition for a Writ of Certiorari.

JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1). A Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit was granted on October 4, 1982. ____U.S.____ (1982).

CONSTITUTIONAL PROVISIONS

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATUTE INVOLVED

Minn. Stat. § 290.09, subd. 22.

Tuition and transportation expense. The amount he has paid to others, not to exceed $500 for each dependent in grades K to 6 and $700 for each dependent in grades 7 to 12, for tuition, textbooks and transportation of each dependent in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964[1] and chapter 363. As used in this subdivision, "textbooks" shall mean and include books and other

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[1] 42 U.S.C.A. § 2000c et seq.

instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and shall not include instructional books and materials used in the teaching of religious tenets, doctrines or worship, the purpose of which is to inculcate such tenets, doctrines or worship, nor shall it include such books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

STATEMENT OF THE CASE

Minn. Stat. § 290.09, subd. 22, grants a deduction from Minnesota gross income for amounts paid by taxpayers to others for tuition, textbook and transportation expenses of dependents enrolled in kindergarten through twelfth grades. For those dependents enrolled in grades K-6, up to $500 per dependent may be deducted. For those enrolled in grades 7-12, the maximum deduction per dependent for such expenses is $700. There is no limit upon the number of dependents for whom deductions may be taken.

Tuition deductions made available under the statute are not limited to fees paid by parents for instruction in secular subjects. As set forth below in greater detail, the tuition deduction is

generally available only to parents of children in nonpublic schools, since Minnesota law forbids public schools from charging ordinary tuition except in extremely limited situations. Minn. Stat. § 120.06. Those "textbooks" for which deductions may be taken are specifically defined to include instructional materials and equipment used in the teaching of subjects customarily taught in Minnesota's public schools, and which are not used in the teaching of religious tenets, doctrines or worship. The books themselves, however, need not actually be used in public schools. In practice, expenses actually available for deduction are limited to only those textbooks and equipment not used in the public schools, because Minnesota already requires

provision of textbooks and educational aids at state expense to nonpublic school pupils to the same extent as they are made available to public school pupils under statutory programs similar to those upheld by this Court in Board of Education v. Allen, 392 U.S. 236 (1968), and its progeny. See Minn. Stat. § § 123.931 - 123.947.[2]

Transportation expenses incurred by the taxpayer are also deductible. However, transportation or textbook expenses incurred in association with extracurricular school activities are not deductible.[3] See also JA-11, 13-14, 23-24.

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[2]Moreover, Minnesota law forbids assessment of fees against public school pupils for textbooks and workbooks. Minn. Stat. § 120.74, subd. 1(a).

[3]The Minnesota Department of Revenue has determined that charges paid

Loss of revenue as a result of the statute was estimated by the Minnesota Department of Revenue in 1978 as $2.4 million per year. (JA-5). Taxpayers claiming the deduction may not also claim Minnesota's "standard deduction." See Minn. Stat. § 290.09, subd. 15. For some taxpayers, reduction of tax due is a function of mandated use of tax tables prepared by the Commissioner of Revenue. Minn. Stat. § 290.06, subd. 2c(b). The Commissioner, who has the authority to prepare the bales in increments of $100

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3 (continued)

for participation in field trips sponsored by a school as a course requirement are deductible. (JA-19). However, as is the case with regard to textbooks and workbooks, see, note 1, supra, Minnesota law forbids assessment of fees against public school students in this circumstance. Minn. Stat. § 120.74, subd. 1(c).

or less, id., has set the increments in $50 steps. See Memorandum in Support of Plaintiffs' Motion for Summary Judgment at Attachment F, Mueller v. Allen, 514 F. Supp. 998 (D. Minn. 1981)(1980 Tax Table). Accordingly, any such taxpayer will realize a tax benefit if he or she deducts $50 or more. For taxpayers with taxable incomes of $20,000 or more, tax due is computed as a function of applicable percentage rates of taxation. Minn. Stat. § 290.06, subd. 2c. Thus, these taxpayers will realize a tax benefit under the statute if they have any amount of deductions.

Despite the apparent facial neutrality of the statute, the record makes clear that benefits actually flowing to taxpayers with children in the

public schools are extremely limited. With regard to tuition expenses, identified by the Court of Appeals as the principal benefit afforded by the statute, Minnesota public school districts are generally forbidden by law from charging tuition. Minn. Stat. § 120.06; see also Minn. Stat. § 120.72. Of the 815,155 public school pupils attending public schools during the 1978-1979 school year, only 79 pupils were assessed a tuition charge "in the ordinary sense." For the 1977-1978 school year, only 40 pupils were charged. (JA-35). These fees may be assessed as a result of a Minnesota statute authorizing such charges for pupils who attend schools in districts outside the district of their permanent

residence. Minn. Stat. § 123.39, subd. 5.[4]

On the other hand, the number of children enrolled in tuition-charging nonpublic schools in Minnesota for the 1979-1980 school year was 90,954. Over 95% of this number, or 86,808, were enrolled in schools considering themselves to be sectarian.[5] (JA-33).

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[4] It should be noted that Minnesota law authorizes the districts of residence of some of these pupils to reimburse the school district actually attended by the pupil for the costs of his or her education. Minn. Stat. § 123.39, subd. 4. Which districts actually did so, obviating the need for these pupils' parents to pay tuition, is not known.

[5] Data concerning the sectarian/nonsectarian character of subject schools is collected annually by the Minnesota Department of Education in association with administration of state aids to nonpublic schools. See MCLU v. Casmey, No. 3-76-8 (D. Minn., November 1, 1977) (Memorandum Opinion and Order).

Presumably each of these pupils incurred tuition charges. Although the record lacks evidence concerning the tuition actually charged by sectarian schools, U.S. Census Bureau figures indicate that the national average is $420 and $976 for sectarian elementary and secondary schools, respectively. See U.S. Department of Commerce, Bureau of the Census, Private School Enrollment, Tuition, and Enrollment Trends: October, 1979, at 27.

Minnesota strictly limits the fees which public schools may charge pupils for services and materials. Minn. Stat. § 120.74. Those fees which are assessed by public school districts are reported annually to the Minnesota Department of Education. Account ledgers maintained by the Department of Education for the 1978-

1979 school year indicate that monies received by public school districts for items characterizable as tuition totalled $2,005,142 (Account Code 1-10.21), JA-38, an average of $2.49 per public school student. For the same school year, the Department of Education reports that $907,204 (Account Code 1-10.38) was collected for other fees which public schools may charge. (JA-38). Not all the fees collected in these account ledgers are deductible, however, under the terms of the statute. The fees, for example, charged to Account Code 1-10.38 represent fees permitted pursuant to Minn. Stat. § § 120.71 - 120.74. (JA-38). Many of those permissible fees relate to extracurricular expenses, see Minn. Stat. § 120.73, not deductible under the terms of the statute. No data

exists which would reveal what proportion of these amounts qualify as permissible deductions, nor what portion of these amounts were actually deducted by taxpayers. (JA-45-46).

Claim for the deduction is made on the standard Minnesota State Income Tax Form M-1 and Schedule A, Itemized Deductions. See infra Appendix A. Neither form calls for line itemization of separate expenses nor information concerning the nature of the school attended by dependents. Accordingly, short of wholesale audit of all returns filed, the state has no mechanism for determining the precise proportion of sums deducted for tuition, textbook and transportation expenses. (JA-5). Similarly, the state has no method for ascertaining the precise proportion of

sums deducted on behalf of children attending nonpublic schools. (JA-6-7).

This action was commenced in the United States District Court for the District of Minnesota, Third Division, on July 1, 1980. Jurisdiction in the District Court was founded on 28 U.S.C. § § 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983. Following dismissal of three of the five original plaintiffs on October 14, 1980, the court ordered entry of summary judgment in favor of respondents on May 13, 1981 and dismissed the complaint.

Appeal to the United States Court of Appeals for the Eighth Circuit followed. On April 30, 1982, the Court of Appeals affirmed the judgment of the District Court. Focussing its attention on the tuition component of the deduction, the

Court of Appeals stated: "The fundamental issue is not whether some or even a substantial benefit accures to a religious institution, but whether the principal or primary effect of the statute is to advance religion." Mueller v. Allen, 676 F.2d 1195, 1205 (8th Cir. 1982). Although arguably recognizing that "the greater number of the class benefitted" under the statute are comprised of the ten percent of taxpayer-parents of pupils attending church-related schools, the Court of Appeals held that the statute was a permissible abstention from taxation. Id.

Petitioners petitioned this Court for a Writ of Certiorari on July 29, 1982. The petition was granted on October 4, 1982. ___U.S.____(1982).

SUMMARY OF ARGUMENT

I. For purposes of constitutional analysis, this Court has discerned a critical distinction between the deductibility of certain user fees paid by a taxpayer in return for a specified service, see Committee for Public Education v. Nyquist, 413 U.S. 756 (1973), on the one hand, and two other forms of "tax expenditures," the failure to tax an entity at all, e.g., Walz v. Tax Commission, 397 U.S. 664 (1970), or the deductibility of certain voluntary and disinterested payments in computing taxable income, e.g., I.R.C. § 170. Unlike Walz exemptions, which are an inevitable concomitant of the need to define the tax base, or a § 170 deduction, which is a legislative attempt to delegate broad discretion to

individuals concerning the allocation of social resources, tax benefits triggered by the payment of specified user fees are direct government rewards for performing a narrowly defined activity. The Court has accordingly treated deductibility of user fees as direct subsidies for the purpose of constitutional review. Committee for Public Education v. Nyquist, supra; Sloan v. Lemon, 413 U.S. 825 (1973).

IIA. Minnesota attempts to defend its tuition deduction statute as a "neutral" tax deduction within the meaning of Walz, arguing that it can be distinguished from the tax benefits struck down in Nyquist because of the broad availability of its deductions to both public and parochial schoolchildren. However, as conceded by the Minnesota Department of Revenue in a

1976 analysis provided to the legislature shortly before the maximum tuition deduction limits were increased, in practice, the tuition deduction law benefits only those taxpayers with children in nonpublic schools. Minnesota public schools are forbidden by law from charging tuition; fewer than ten percent of school age children attend nonpublic schools, and more than ninety-six percent of those attend sectarian schools. Since the benefits of the tuition deduction are disproportionately and overwhelmingly skewed in favor of parents of children in pervasively sectarian schools, the deductions are unconstitutional. Lemon v. Kurtzman, 403 U.S. 602 (1971); Committee for Public Education v. Nyquist, supra; Sloan v. Lemon, supra.

IIB. Even if the benefits of the Minnesota statute were equally available to children in public and nonpublic schools, the statute would be invalid as an establishment of religion, since it constitutes the provision of unrestricted funds to sectarian elementary or secondary schools. This Court has consistently struck down such unrestricted aid. E.g., Lemon v. Kurtzman, supra; Committee for Public Education v. Nyquist, supra; Sloan v. Lemon, supra; Meek v. Pittenger, 421 U.S. 349 (1975).

IIC. Even if Minnesota attempted, as it has not, to cure the problems inherent in its unrestricted subsidy to sectarian schools by a system of audits to ensure that state aid did not flow to the sectarian functions of such schools, the

statute would be invalid. Any such attempt would involve an impermissible degree of entanglement between church and state, since it would require constant monitoring to assure the secular use of state funds. Lemon v. Kurtzman, supra; Committee for Public Education v. Nyquist, supra.

III. The inclusion of textbooks and school transportation expenses within the category of expenditures which are deductible under the Minnesota statute does not render the statute constitutional.

The textbook deduction differs in critical respect from the program upheld in Board of Education v. Allen, 392 U.S. 236 (1968). Unlike the law upheld in Allen, the "textbooks" for which deductions are available in

Minnesota are selected by sectarian schools (or parents with children at those schools) without any designation or approval by public school authorities; are available to sectarian schoolchildren on terms far more favorable than to public schoolchildren; and include educational equipment, whose provision to sectarian schoolchildren has been repeatedly struck down. Wolman v. Walter, 433 U.S. 229 (1977).

Finally, the Minnesota statute's transportation deduction must also be struck down. Because it goes beyond the benefits upheld in Everson v. Board of Education, 330 U.S. 1 (1947), authorizing benefits for field trip transportation, it is unconstitutional under Wolman v. Walter, supra.

ARGUMENT

Introductory Statement

This case poses fundamental questions concerning, first, the extent to which the grant of a tax benefit implicates constitutional limitations on government power, and second, the extent to which government may channel financial assistance to sectarian education. Little attempt was made in the courts below to analyze the two questions separately. Petitioners respectfully suggest, however, that the Establishment Clause issue posed by Minnesota's attempt to permit parents to deduct tuition payments to sectarian schools in computing their taxable income can best be approached after first considering the general relationship between tax benefits and constitutional law.

I. TAX BENEFITS KEYED TO THE PAYMENT OF USER FEES FOR THE PROVISION OF SERVICES MUST BE VIEWED, FOR THE PURPOSES OF CONSTITUTIONAL ANALYSIS, AS A GOVERNMENT SUBSIDY OF SUCH SERVICES.

Tax benefits are broadly divisible into at least three categories: (1) the failure to tax at all, e.g., Walz v. Tax Commissioner, 397 U.S. 664 (1970); (2) the deductibility of certain voluntary payments in computing taxable income, e.g., I.R.C. § 170, see Bob Jones University v. United States, 639 F.2d 147 (4th Cir. 1980), cert. granted, ____ U.S. ____ (1982), currently pending as No. 81-3[6]; and (3) the deductibility, in computing taxable income, of certain user fees paid by taxpayers in return

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[6]Deductibility of voluntary payments may take the form of a dollar-for-dollar credit against taxes

for a specified service, e.g., Committee for Public Education v. Nyquist, 413 U.S. 756 (1973); Sloan v. Lemon, 413 U.S. 825 (1973); Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), aff'd mem. sub. nom. Grit v. Wolman, 413 U.S. 901 (1973); Public Funds for Public Schools v. Byrne, 590 F.2d 514 (3rd Cir.), aff'd mem., 442 U.S. 907 (1979).[7]

Tax benefits keyed to the payment of user fees for specified services are

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6 (continued)

payable or a deduction from gross income in computing taxable income. Under a progressive tax system, credits will yield the same economic benefit regardless of tax bracket, while the precise value of deductions from gross income will vary with the taxpayer's tax bracket.

[7]As with benefits keyed to voluntary payments, the deductibility of user fees may take the form of a dollar-for-dollar credit against taxes

dramatically different from Walz exemptions or § 170 deductions. Unlike a Walz exemption, which is an inevitable concomitant of the need to define the tax base,[8] or a § 170 deduction, which is an attempt to delegate broad discretion

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7 (continued)

payable or a deduction from gross income in computing taxable income. The Minnesota statute at issue in this case provides for a deduction from gross income. Minn. Stat. § 290.09, subd. 1. The statute at issue in Committee for Public Education v. Nyquist, 413 U.S. 756 (1973) provided for a partial tax credit which varied according to a taxpayers's gross income.

[8]See Bittker, Churches, Taxes and the Constitution, 78 Yale L.J. 1285, 1293-96 (1969). The argument in Walz that exemptions were subsidies rested on the assumption that the state grants dispensations from an "ideal" position of total taxation, but that assumption begs the question. It would be equally valid to assume that the state begins from an "ideal" position of zero taxation and decides what activities should be placed within its taxing ambit. Accordingly, in Walz, this Court recognized that while an

to individuals concerning the allocation of social resources,[9] tax benefits triggered by the payment of specified user fees are direct government rewards for performing a narrowly defined activity. The taxpayer acts, in part, because he anticipates and receives an equivalent benefit, not (as under § 170) out of "detached and disinterested generosity."

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8 (continued)

exemption from taxation undoubtedly confers an economic benefit on the favored activity, the inevitable task of defining the tax base by choosing to tax certain activities while refraining from the taxation of other activities is not necessarily the constitutional equivalent of a direct government payment to the favored activity.

[9]In a democracy, the great bulk of the resources marshalled by the government through the taxing power should, of course, be expended only on projects which have been democratically selected. Respect for individual decision making argues strongly, however,

The user fee deduction merely acts as a direct government subsidy of the narrowly defined favored activity. Not surprisingly, therefore, the Internal Revenue Service has repeatedly refused to permit taxpayers to deduct tutition payments to parochial schools under I.R.C. § 170. Rev. Rul. 79-99, 1979-2 C.B. 473;

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9 (continued)

for the delegation of at least a portion of society's available tax resources to individual allocation decisions. Income tax deductions for voluntary payments constitute the principal mechanism for permitting individuals to exercise a degree of decentralized decision making concerning the allocation of potentially available social resources. Bittker, Charitable Contributions: Tax Deductions or Matching Grants?, 28 Tax L. Rev. 37, 61-62 (1972); Ginsburg, The Real Property Tax Exemption of Nonprofit Organizations: A Perspective, 53 Temple L.Q. 291, 306-13 (1980). The essence of the deduction for voluntary contributions is, therefore, the substitution of individual for government decision making.

see generally Duberstein v. Commissioner, 363 U.S. 278 (1960); Oppewall v. Commissioner, 468 F.2d 1000 (1st Cir. 1972); Winters v. Commissioner, 468 F.2d 778 (2d Cir. 1972).[10]

Since tax benefits keyed to the payment of user fees so obviously consitute a government subsidy of the favored activity, this Court has uniformly treated user fee deductions as direct subsidies for the purpose of

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[10]See also Gottlieb v. Commissioner of Taxation, 310 Minn. 62, 245 N.W. 2d 244 (1976). As a matter of the Minnesota law of charitable contributions, the Minnesota Supreme Court has recognized this very distinction. In Gottlieb, the Minnesota Court was faced with the deductibility under Minnesota's analogue to I.R.C. § 170 of tuition payments made by the taxpayer to a school in return for religious training of the taxpayer's children. The Court stated:

. . .[W]e are unable to hold that a

constitutional review. Committee for Public Education v. Nyquist, supra; Sloan v. Lemon, supra; Kosydar v. Wolman, supra; Public Funds for Public Schools v. Byrne, supra; see also Rhode Island Federation of Teachers v. Norberg, 630 F.2d 855 (1st Cir. 1980). In Nyquist, for example, this Court invalidated a tax

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10 (continued)

> payment made not as a gift or contribution but in consideration of equal value flowing to the taxpayer is nonetheless allowable as a deduction under the statute. Such a decision would allow taxpayers to deduct payments for YMCA dues or for tuition paid to the University of Minnesota, neither of which, it seems to us, are transactions the Legislature intended to be allowed as deductions.
>
> . . .
>
> . . . To the extent that [payments] are made in consideration of valuable services being rendered to the taxpayer in exchange, the statute does not allow the deduction.

310 Minn. at 66, 245 N.W. 2d at 247.

credit keyed to the payment of private school tuition, noting that, unlike the tax exemption upheld in Walz, tuition tax credits constitute "special tax benefits." Justice Powell, writing for the Court in Nyquist, stated:

> . . . .[I]nsofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions.

413 U.S. at 793.[11]

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[11]In the context of a § 170 deduction, a taxpayer receives no economic quid pro quo for his contribution. Even after the tax deduction, a donor remains in an economically negative position in connection with the entire transaction. When user fees are involved, however, a taxpayer has already received an economic quid pro quo equal to the value of his payment. The tax deduction acts to subsidize the payment, leaving the taxpayer in an economically positive position in connection with the entire transaction. It is that economic benefit which constitutes a direct government subsidy.

The court below declined to apply Nyquist to invalidate Minnesota's tuition deduction program, reasoning that Minnesota's plan constituted a "neutral" tax deduction scheme which did not have the primary effect of advancing religion. 676 F.2d at 1204-05. Such an approach, however, wholly ignores the fundamental distinction between deductions for voluntary contributions and deductions for user fees. Even if the Eighth Circuit had been considering a mere state analogue of I.R.C. § 170, rather than a statute granting tax benefits for tuition payments, its analysis would have been inappropriate, since, as petitioners demonstrate infra in Point IIA, the actual availability of the Minnesota deduction is so dramatically skewed in favor of religious

activities that it would not meet the test of "neutrality" established by Walz and Widmar v. Vincent, ____ U.S. ____, 102 S. Ct. 269 (1982). The Minnesota statute is not, however, merely an analogue of I.R.S. § 170. As a "user fee deduction," it is the unconstitutional equivalent of a direct government subsidy to a specified activity -- the payment of private elementary and secondary school tuition. As such, its constitutionality must be measured accordingly. The court below appears to have been misled by footnote 49 in Nyquist, which reads:

> Since the program here does not have the elements of a genuine tax deduction, such as for charitable contributions, we do not have before us, and do not decide, whether that form of tax benefit is constitutionally acceptable under the "neutrality" test in Walz.

413 U.S. at 790, n.49.

However, even assuming that a

"genuine tax deduction" might be treated differently, one does not create a "genuine tax deduction" similar to I.R.C. § 170 merely by labeling it as such. The two critical elements of the "genuine tax deduction" referred to in Nyquist are the voluntary and disinterested nature of the payments and its broad secular availability. The Minnesota statute provides neither. Instead of voluntary and disinterested payments, the Minnesota statute is keyed to the payment of a user fee for services rendered. See Winters v. Commissioner, supra and Oppewal v. Commissioner, supra. Instead of broad secular availability, the Minnesota plan is overwhelmingly skewed toward the ninety-six percent of Minnesota's nonpublic school population in sectarian

elementary and secondary schools.[12] Thus, the court below was incorrect in analyzing the Minnesota plan as a § 170 charitable deduction rather than an overt subsidy of religious education. As petitioners demonstrate, when viewed properly as the fuctional equivalent of a

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[12]See Point IIA infra. By contrast, the Nyquist Court noted that 85 percent of New York's nonpublic schools were church affiliated. 413 U.S. at 768. Minnesota's attempt to defend its plan by arguing that tuition deductions are, as a matter of theory, available to parents of public school students is mindful of Anatole France's observation that the law in its majestic equality forbids the rich as well as the poor to beg bread and sleep under the bridges of Paris. Despite respondents' lame contention to the contrary, the overwhelming bulk of parents of public school students do not pay tuition. If respondents wish to establish the broad secular availability of tuition deductions in Minnesota, they must come forward with evidence, not speculation. See infra at 45-50.

subsidy, Minnesota's plan cannot withstand Establishment Clause scrutiny.

II. MINNESOTA'S ATTEMPT TO PERMIT PARENTS TO DEDUCT A PORTION OF TUITION CHARGED BY SECTARIAN ELEMENTARY AND SECONDARY SCHOOLS IN COMPUTING TAXABLE INCOME VIOLATES THE ESTABLISHMENT CLAUSE BECAUSE IT: (1) HAS A PRINCIPAL OR PRIMARY EFFECT OF AIDING RELIGIOUS ACTIVITY; (2) FOSTERS AN IMPERMISSIBLE DEGREE OF ENTANGLEMENT BETWEEN CHURCH AND STATE; AND (3) IS A PURPOSEFUL ATTEMPT TO AID RELIGIOUS SCHOOLS.

This case marks at least the eighteenth time in recent years that this Court has been confronted with attempts to channel government aid to sectarian education.[13] Despite the substantial

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[13] Everson v. Board of Education, 330 U.S. 1 (1947); Board of Education v. Allen, 392 U.S. 236 (1968); Lemon v. Kurtzman, 403 U.S. 602 (1971); Tilton v. Richardson, 403 U.S. 672 (1971); Hunt v. McNair, 413 U.S. 734 (1973); Levitt v.

efforts of this Court and the emergence of the now familiar three-part Establishment Clause test,[14] few issues

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13 (continued)

Committee for Public Education, 413 U.S. 472 (1973); Committee for Public Education v. Nyquist, 413 U.S. 756 (1973); Sloan v. Lemon, 413 U.S. 825 (1973); Meek v. Pittenger, 421 U.S. 349 (1975); Roemer v. Board of Public Works, 426 U.S. 736 (1976); Wolman v. Walter, 433 U.S. 229 (1977); Committee for Public Education v. Regan, 444 U.S. 646 (1980). See also Wolman v. Essex, 342 F. Supp. 399 (S.D. Ohio), aff'd, 409 U.S. 808 (1972); Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), aff'd mem. sub nom., Grit v. Wolman, 413 U.S. 901 (1973); Public Funds for Public Schools v. Marburger, 358 F. Supp. 29 (D.N.J. 1973), aff'd mem., 417 U.S. 961 (1974); United Americans for Public Schools v. Franchise Tax Board, 419 U.S. 890 (1975), aff'g, No. C-73-0090 (N.D. Cal.); Public Funds for Public Schools v. Byrne, 590 F.2d 514 (3rd Cir.), aff'd mem., 442 U.S. 907 (1979).

[14]The three-part test was first announced by the Chief Justice in his opinion for the Court in Lemon v. Kurtzman, 403 U.S. at 612-13:

> Every analysis in this area must begin with consideration of the

continue to provoke such sustained divisiveness in communities across the nation. Quarrels over state aid to parochial schools pit neighbor against neighbor along religious lines. Legislative attempts to disguise schemes patently intended to aid sectarian education breed cynicism and disrespect for the legislative process.

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14 (continued)

> cumulative criteria developed by the Court over many years. Three such tests have been gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive entanglement with religion.'

Petitioners discuss the principal or primary effect issue infra at IIA and IIB; the excessive entanglement issue infra at IIC; and the secular legislative purpose issue infra at IID.

Although this Court has had to draw some difficult lines, the outlines of its Establishment Clause jurisprudence remain clear. This Court has firmly resisted attempts to provide unrestricted subsidies to sectarian elementary and secondary schools, recognizing that unrestricted payments must, of necessity, aid sectarian schools in advancing the religious mission which is their raison d'etre. E.g., Lemon v. Kurtzman, supra; Committee for Public Education v. Nyquist, supra; Levitt v. Committee for Public Education, supra; Sloan v. Lemon, supra; Meek v. Pittenger, supra. Similarly, this Court has refused to tolerate aid schemes which purport to be "neutral" but which are, in fact, thinly disguised mechanisms for channeling public funds to parochial schools. E.g., Public Funds for

Public Schools v. Marburger, supra; Public Funds for Public Schools v. Byrne, supra. Such "unrestricted subsidy" and "disproportionately religious" schemes have been found by this Court to have the "principal or primary effect" of advancing religion, within the meaning of this Court's governing test. As petitioners now show, the Minnesota statute is infirm on both grounds.

A. Deduction of Tuition Payments to Sectarian Schools in Computing Taxable Income has the Principal or Primary Effect of Advancing Religion Because it is Disproportionately Available to Parents whose Children Attend Sectarian Schools.

Minnesota's principal defense of the tuition deduction is that, since it is facially available to parents of children attending public as well as private schools, it is a "neutral" tax deduction which subsidizes education not religion

and is closer to the tax exemption upheld in Walz than to the tax credit struck down in Nyquist. Petitioners will demonstrate below that even if Minnesota's "education subsidy" were "neutrally" available, it would, nevertheless, violate the Establishment Clause as an unrestricted subsidy to religious activity. See infra at IIB. However, Minnesota's defense of its scheme fails at the outset, since it is clear that the overwhelming bulk of the benefits provided by Minnesota's tuition deduction plan flows to parents of children attending sectarian elementary and secondary schools.

The most devastating refutation of Minnesota's assurance that substantial tax benefits under the challenged statute flow to public, as well as sectarian,

school parents is found in the "Revenue Analysis" prepared by the Minnesota Department of Revenue in connection with the amendments to the tuition deduction program enacted in 1976. That document, provided to the legislature shortly before and in connection with the bill's passage, informed legislators that:

> Only those taxpayers having dependents in nonpublic elementary or secondary schools are affected by this law since tuition, transportation and textbook expenses for public school students are paid for by the school district.[15]

Given the assessment of the Department of Revenue that the tuition tax program would have little or no effect upon

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[15]A subsequent Revenue Analysis prepared upon enactment of the legislation contains the same statement. The Revenue Analysis is reproduced as Appendix A to the Brief Amici Curiae of the National Committee for Public Education and Religious Liberty et al.

public school parents, Minnesota's attempt to cloak its program as "neutral" aid to public and private education is revealed as a sham designed to shore up a patently unconstitutional program.

Of course, even without the telling concession of the Minnesota Department of Revenue, the factual context of the tuition program reveals its disproportionately religious effect.

As the record makes clear, fewer than eleven percent of Minnesota's school age children attend nonpublic schools, and therefore could be charged for ordinary tuition. (JA-26); see Minn. Stat. § § 120.06 and 120.72. Of the 88,524 pupils attending private elementary or secondary schools in 1978-79, approximately ninety-six percent (85,243) attended

sectarian schools.[16] Since the vast bulk of public school parents pay nothing for tuition, the ordinary tuition deductions are overwhelmingly available in connection with private schoolchildren, ninety-six percent of whom attend sectarian schools.

This Court has consistently invalidated statutes which funnel aid to nonpublic students under similar circumstances. E.g., Lemon v. Kurtzman, supra; Levitt v. Committee for Public Education, supra; Committee for Public Education v. Nyquist, supra; Sloan v. Lemon, supra; Marburger v. Public Funds for Public Schools, 417 U.S. 961 (1974), aff'g mem., 358 F. Supp. 29 (D.N.J.

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[16] In Nyquist, only 85% of nonpublic schools were sectarian schools. 413 U.S. at 768.

1973); United Americans for Public Schools v. Franchise Tax Board, 419 U.S. 890 (1974), aff'g mem., No. C-73-0090 (N.D. Cal.); Byrne v. Public Funds for Public Schools, 442 U.S. 907, aff'g, 590 F.2d 514 (3d Cir. 1979); Grit v. Wolman, 413 U.S. 901 (1973), aff'g mem., 353 F. Supp. 744 (S.D. Ohio 1972); Wolman v. Walter, 433 U.S. 229 (1977).

Despite the overwhelming correlation between attendance at a sectarian school and enjoyment of the tuition deduction, Minnesota argues that the theoretical availability of the deduction to the handful of children attending school out of their districts or attending special school programs renders the deduction neutral. However, the potential availability of the deduction in connection with the fewer than 100

Minnesota children who may pay school tuition to attend public school in another district cannot save a plan which, in fact, provides disproportionate aid to the parents of more than 85,000 children attending parochial schools. (JA-26). Indeed, the availability of the deduction to public school parents is nothing more than the "window dressing" described by the district court in Rhode Island Federation of Teachers v. Norberg, 479 F. Supp. 1364, 1371 (D.R.I. 1979),[17] even

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[17]A recently completed study for the tax years 1978 and 1980, undertaken and prepared by the Minnesota Department of Revenue, Research Office, reveals that $19,268,489 was deducted under § 290.09 in 1978. Minnesota Department of Revenue, Research Office, Individual Income Tax Sample: Tax Years 1978 and 1980 at 50 (July, 1982). A copy of this study is being lodged with the Clerk of this Court and submitted to opposing counsel.

From dollars deducted, subtract the amount of school expenses paid for

if one analyzes the maximum benefits theoretically available to public school parents under assumptions most favorable

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17 (continued)

nonsectarian education. Assuming that all 3,281 private nonsectarian schoolchildren for the 1978-1979 school year, JA-26, generated the full $700 deductions allowed under the challenged statute, this group took, at most, $2,296,700 in deductions. To this product, add those fees respondents indicate were paid by parents to public school districts in permissible fees for public education, $2,912,346. (JA-38). (Not all of those fees are deductible, but no data exists to determine what proportion is deductible.) Other than de minimus amounts for pencils, notebooks and the like, the sum, $5,209,046, represents the number of dollars available for deductions for expenses incurred at both nonsectarian private and public schools. The result, after subtracting these expenses from the total dollars deducted, is $14,059,443.

This latter figure represents the minimum dollars deducted by parents of schoolchildren attending religiously-affiliated schools. The amount is 73% of the dollars deducted under the statute. Conversely, the maximum proportion of dollars deducted by parents of public and private

to Minnesota's contention.[18]

Thus, for the 1978-1979 school year, petitioners have estimated that the approximately 820,000 Minnesota pupils attending nonsectarian schools generated $5.2 million in deductions, or an average of $6.35 per pupil. On the other hand,

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17 (continued)

nonsectarian schoolchildren is 27%.

These calculations are presented schematically in Appendix B to this brief, infra.

[18]For example, not all the 3,281 schoolchildren attending private nonsectarian schools during the 1978-79 school year were enrolled in grades 7-12, permitting $700, rather than $500, in deductions. Neither can it fairly be expected that all taxpayers with these expenses chose to take advantage of § 290.09 by itemizing their deductions, or that parents paying the minimal deductible fees charged by Minnesota for public school educational programs would actually deduct those sums. In addition, not all the fees paid into the state accounts are deductible under the terms of

the remaining $14.0 million in deductions were distributed among the approximately 85,000 pupils attending religiously-affiliated schools, or an average deduction of $164.71. The ratio of these differences is 26:1.

To the extent that any serious factual question exists concerning the disproportionately religious nature of

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18 (continued)

the statute. Admission fees for extra-curricular events and charges for transportation to those events are not deductible. Cf. Minn. Stat. § 120.73, subd. 1 and JA-11. Field trip charges are collectible by public schools only if the trip is not required for a class, and are, therefore, not deductible. Cf. id. and JA-19. Nor are yearbooks, class rings, graduation announcements and the like. Cf. id. and JA-19. In short, the 27% figure derived above substantially overstates the proportion of actual tax deductions taken by parents of children in public and nonsectarian private schools.

the Minnesota deduction, it seems clear that Minnesota bears the burden of production, and even the burden of persuasion, on the issue of broad secular availability for two independent reasons. First, where, as here, a challenger demonstrates the overwhelming probability that a governmental subsidy is disproportionately available to sectarian institutions, a state must do more than merely suggest the remote possibility that non-religious activities may also derive benefit from the program. In analogous settings, where challengers have demonstrated a likelihood of unconstitutional activity, this Court has consistently ruled that the production burden shifts to the state to refute the plaintiff's prima facie case. For example, when a statistical

showing of disparity in the selection of jurors has been demonstrated, this Court has required the state to produce rebuttal evidence or suffer a directed verdict. Casteneda v. Partida, 430 U.S. 482, 493-95 (1977). Similarly, in Title VII cases, when a plaintiff establishes a prima facie case of disparate treatment, this Court has shifted the production burden to the defendant and required him to come forward with a credible explanation or suffer a directed verdict. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); see also Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274 (1977). In this case, petitioners demonstrated an overwhelming likelihood that Minnesota's tuition deduction plan has a disproportionate religious effect,

thereby, shifting the production burden on the issue to the state. Nothing in Minnesota's speculations about secular availability even begins to satisfy such a shifted production burden.[19]

Second, the absence of more precise evidence concerning the proportion of deductions and revenue loss attributable to parents of children in sectarian

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[19]Since Minnesota has not satisfied its shifted production burden, it is not necessary to consider the placement of the persuasion burden on the issue of broad secular effect. Petitioners suggest, however, that the persuasion burden rests with Minnesota, since a broad secular effect defense is most analogous to an affirmative defense. See, e.g., Mt. Healthy City Board of Education v. Doyle, supra. Moreover, given the substantial nature of petitioners' showing, the probabilities are such as to require a heavier burden on defendants. Compare Mt. Healthy, supra, with Texas Department of Community Affairs v. Burdine, supra. See generally Brief for Respondent, Connick v. Meyers, No. 81-1251, at 31-34.

schools is wholly attributable to the state, which has designed its program and the tax forms implementing it in such a way as to make more specific evidence unavailable without individualized discovery or audit of millions of taxpayers. Under these circumstances, as petitioners urged in the Court of Appeals, if summary judgment striking down the statute was judged impossible absent further evidentiary materials concerning the actual incidence of tax benefits, the case should have been remanded with the burden of producing additional data shifted to the state, which alone is in a position to compile it by amending the tax forms to require line itemization of deductions taken under the challenged statute. The approach taken by the Court of Appeals --

essentially to presume accrual of the statute's benefits to all state taxpayers in the absence of firmer evidence than can presently be compiled from the state's records -- prevents analysis of the challenged statute beyond its face, an approach patently inconsistent with the more penetrating analysis required by this Court's Establishment Clause jurisprudence. See, e.g., Committee for Public Education v. Nyquist, supra; Wheeler v. Barrera, 417 U.S. 402 (1974).

B. Deducting Tuition Payments to Sectarian Schools in Computing Taxable Income has the Principal or Primary Effect of Advancing Religion Because it is the Functional Equivalent of an Unrestricted Subsidy to Sectarian Elementary and Secondary Education.

Petitioners have demonstrated that Minnesota's scheme disproportionately

benefits the parents of children attending parochial schools and, thus, has the primary effect of advancing religion. However, even if the Minnesota tax benefits were "neutrally" distributed among the population as a whole, they are the constitutional equivalent of a direct government subsidy of sectarian education. Even a "neutral" government subsidy of education would be clearly invalid to the extent it resulted in the provision of unrestricted funds to sectarian elementary or secondary schools.[20] For

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[20]As Justice Black wrote in Everson:

> The "establishment of religion" clause of the First Amendment means at least this . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion.

330 U.S. at 116.

example, in Lemon v. Kurtzman, supra, this Court invalidated a fifteen percent salary supplement paid to teachers in private schools as a violation of the Establishment Clause. The payments were "neutral," since they merely matched government salary payments routinely made to all public school teachers. This Court recognized, however, that even if a government subsidy is made equally available to public as well as private schools, it will, nevertheless, violate the Establishment Clause when couched in a form which permits its use to advance the teaching of religion. Similarly, in Nyquist, eight members of this Court were agreed that an unrestricted maintenance and repair grant to sectarian elementary and secondary schools violated the Establishment Clause. The grant was

"neutral" in that the state also routinely subsidized the maintenance and repair of public schools. This Court recognized, however, that despite the even-handed availability of the subsidy to public and private schools, the subsidy violated the Establishment Clause because it was couched in a form which permited its use in connection with a sectarian school's religious mission.

Of course, when a subsidy benefits sectarian education in an institution which is not wholly permeated with religion, such as certain sectarian universities, this Court has permitted enforceable formal assurances that the subsidy will be used for secular purposes to suffice. E.g., Tilton v. Richardson, 403 U.S. 672 (1971); Hunt v. McNair, 413 U.S. 734 (1973); Roemer v. Board of

Public Works, 426 U.S. 736 (1976). The standard of such assurance remains high, however, and when the subsidy benefits sectarian elementary and secondary schools, which, as this Court has consistently recognized, have the inculcation of religious tenets as their principal mission,[21] even a "neutral" subsidy will be upheld only if couched in a form which renders it incapable of use in connection with the school's pervasive religious mission.

Accordingly, in Lemon v. Kurtzman, supra, this Court struck down a Rhode Island statute providing salary supplements to secular teachers in sectarian schools and a Pennsylvania

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[21] See, e.g., Lemon v. Kurtzman, 403 U.S. at 610-619; Meek v. Pittenger, 429 U.S. at 366.

statute reimbursing private schools for a percentage of the teaching expenses of secular teachers on the ground that such aid raised an unacceptably high risk of subsidizing religious instruction.[22] In Committee for Public Education v. Nyquist, supra, this Court invalidated a New York statute which provided annual

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[22]This Court was careful to note in Lemon v. Kurtzman, 403 U.S. at 618, that the danger of subsidizing religion inherent in subsidizing teachers in sectarian schools was not attributable to bad faith but to the pervasive role which religion is expected to play in all facets of sectarian education:

> . . .[A] dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral.

This rationale of Lemon was further summarized by the Court in Roemer v. Maryland Public Works Board, 416 U.S. 736, 748-49, 764-65 (1976).

maintenance and repair grants to private schools on the ground that the grants could be used to maintain facilities used for religious purposes. Nyquist also struck down statutes which provided for tuition reimbursements and tax credits to parents of children in private schools because they acted as an unrestricted subsidy of sectarian education. In Sloan v. Lemon, supra, this Court invalidated a Pennsylvania statute which provided reimbursements to parents of children in private school because the reimbursement constituted an unrestricted subsidy to religious schools. As the Court noted:

> Whether that benefit be viewed as a simple tuition subsidy, as an incentive to parents to send their children to sectarian schools, or as a reward for having done so, at bottom its intended consequence is to preserve and support religion-oriented institutions. We think it plain that this is quite unlike the

> sort of "indirect" and "incidental" benefits that flowed to sectarian schools from programs aiding all parents by supplying bus transportation and secular textbooks for their children. Such benefits were carefully restricted to the purely secular side of church-affiliated institutions and provided no special aid for those who had chosen to support religious schools. Yet such aid approached the "verge" of the constitutionally impermissible.

413 U.S. at 832.

In Levitt v. Committee for Public Education, supra, this Court invalidated a New York statute which reimbursed private schools for the costs of preparing, administering and grading teacher-prepared tests because the reimbursement constituted a subsidy of an integral part of the educational process which could not readily be severed from the school's religious function. In Meek v. Pittenger, supra, this Court struck down on their face Ohio statutes which

provided for the loan of instructional materials and equipment and the provision of auxiliary services to private schools. Discussing provision of "secular" educational materials, the Court noted:

> Even though earmarked for secular purposes, when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission, state aid has the impermissible primary effect of advancing religion. Hunt v. McNair, 413 U.S. 734, 743 . . . Substantial aid to the educational function of such schools, accordingly, necessarily results in aid to the sectarian school enterprise as a whole.

421 U.S. at 365-66.

In Wolman v. Walter, this Court invalidated on its face an Ohio statute which sought to loan educational materials to parents and students rather

than, as forbidden by Meek, directly to private schools, noting:

> In view of the impossibility of separating the secular education function from the sectarian, the state aid inevitably flows in part in support of the religious role of the schools.

433 U.S. at 250.

The Wolman Court also invalidated an attempt to reimburse private schools for the expenses of field trips, recognizing that any aid to the general educational mission of a sectarian elementary and secondary school inevitably assists in the performance of its pervasive religious mission. 433 U.S. 253-54. See also Byrne v. Public Funds for Public Schools, 442 U.S. 907, aff'g mem., 590 F.2d 514 (3d Cir. 1979) (invalidating $1000 "personal exemption" available for each dependent attending a nonpublic elementary or secondary school in New

Jersey).

Thus, this Court has invalidated government aid to sectarian schools for field trips, instructional materials, building maintenance, teacher salaries, teacher-prepared tests, and tuition subsidies. The form in which this aid has been provided has been treated by this Court as irrelevant and properly so. Sloan v. Lemon, 413 U.S. at 831-32; Nyquist, 413 U.S. at 789-90; Wolman, 433 U.S. at 250-51; Committee for Public Education v. Regan, 444 U.S. at 657. Aid to sectarian schools has been invalidated whether cast in the form of direct grants to schools, Lemon v. Kurtzman, reimbursement to parents, Sloan v. Lemon, or partial tax credits, Nyquist. The Minnesota statute at issue in this case

permits parents to deduct their tuition payments in computing taxable income and, thus, directly subsidizes the payment of tuition to sectarian schools. Both its substance and, except in trivial respects, its form are indistinguishable from Nyquist and Sloan. Such unrestricted tuition payments inevitably support both religious and secular aspects of the schools' missions. Accordingly, just as the maintenance grants and tuition benefits in Nyquist and tuition reimbursement in Sloan constituted unrestricted aid which would inevitably assist the religious mission of a sectarian elementary or secondary school, the tuition subsidy established by the Minnesota plan has an analytically indistinguishable inevitable primary

effect of advancing the religious mission of Minnesota's sectarian schools.[23]

C. The Deductibility of Tuition Payments to Elementary and Secondary Schools in Computing Taxable Income Fosters An Impermissible Degree of Entanglement Between Church and State Since Only An Intrusive System of Tax Auditing Can Ensure That Fruits of the Scheme Are Not Utilized to Advance the Religious Mission of Sectarian Schools.

When a parent deducts parochial school tuition in computing his or her

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[23]This Court has upheld government aid to elementary and secondary religious schools only when its form has rendered it virtually impossible for use in fulfilling the school's religious mission. See generally Everson v. Board of Education, 330 U.S. 1 (1947) (bus transportation); Wolman v. Walter, 443 U.S. 229 (1977) (administering and grading standardized tests; provision of diagnostic and therapeutic services in public facilities); Committee for Public Education v. Regan, 444 U.S. 646 (1980) (administering and grading standardized tests).

taxable income, Minnesota provides a direct tuition subsidy. Committee for Public Education v. Nyquist, supra; cf., Sloan v. Lemon, supra. As petitioners have demonstrated, supra at IIB, such a direct subsidy constitutes an unrestricted cash payment to the sectarian school which is virtually certain to advance its religious mission. Such unrestricted subsidies have been consistently held violative of the Establishment Clause. Lemon v. Kurtzman, supra; Committee for Public Education v. Nyquist, supra.

It would, of course, be theoretically possible for Minnesota to impose administrative safeguards designed to minimize the possibility that the financial benefits flowing from the state to sectarian schools via the tax

deduction route were used to advance a school's religious mission. The safeguards would take the form of a comprehensive tax audit program which, unlike Minnesota's current procedures, (1) identified taxpayers deducting payments to sectarian schools; (2) assured that recipient schools segregated a pro rata share of those payments for use in purely secular endeavors; and (3) monitored schools to assure secular use of the subsidy. Such a plan, if implemented, would constitute precisely the impermissible degree of entanglement between church and state which the Chief Justice has eloquently condemned. Lemon v. Kurtzman, 403 U.S. at 622-24.

The courts below declined to recognize the danger of impermissible entanglement, asserting the procedures

required to verify the deduction would not entail any supervision of a religious institution. Mueller v. Allen, 676 F.2d 1195, 1202 (8th Cir. 1982), quoting, 514 F. Supp. 998, 1003 (D. Minn. 1981). However, the cursory audit contemplated by the courts below would verify only that payment had been made to a religious institution. It would in no way accomplish what this Court has steadfastly found necessary, namely, the assurance that state aid be used solely for secular purposes. Lemon v. Kurtzman, 403 U.S. at 602; Sloan v. Lemon, 413 U.S. at 832-32; Nyquist, 413 U.S. at 783; Meek, 421 U.S. 365-66; Wolman, 433 U.S. at 254; cf., Committee for Public Education v. Regan, 444 U.S. at

659-60.[24]. Thus, Minnesota has a choice, albeit an unhappy one: it may administer a cursory audit which must necessarily fail to assure secular use of the subsidy, or a Draconian audit in an attempt to assure secular use, but which would foster impermissible entanglement. Either choice leads to the invalidation of the tuition tax deduction as applied to payments to sectarian elementary and secondary schools. In short, as this Court has previously noted, subsidies like Minnesota's tuition deduction plan

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[24]As this Court held in Roemer v. Board of Public Works, 426 U.S. at 765, "[T]he ability of the state to identify and subsidize separate secular functions carried out at the school, without on-the-site inspections being necessary to prevent diversion of the funds to sectarian purposes [is] crucial to a nonentangling aid program . . ."

cannot pass between the Scylla of potential religious use and the Charybdis of impermissible entanglement. Nyquist v. Committee for Public Education, 413 U.S. at 777-78, 787-88; Wolman v. Walter, 433 U.S. at 254-55.

D. Minnesota's Attempt to Permit Parents to Deduct Tuition Payments to Elementary and Secondary Sectarian Schools is an Intentional Attempt to Channel Financial Aid to Sectarian Education and, thus, Does Not Advance a Secular Purpose.

The "secular purpose" prong of this Court's three-part test has not played a substantial role in cases dealing with government aid to parochial education. In virtually every case, the Court has accepted a legislative assertion that the statutes in question were ultimately motivated by the secular purpose of enhancing the educational welfare of

children in nonpublic schools. Wolman v. Walter, supra; Nyquist v. Committee for Public Education, supra; Lemon v. Kurtzman, supra. Petitioners do not suggest that the Minnesota legislature was not also similarly motivated. Petitioners do suggest, however, that the relaxed test of secular purpose employed by the Court overlooks a critical distinction between the "ultimate" purpose of a statute and the more immediate means intentionally used to advance that purpose. Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L. J. 1205 (1970). Whether or not a legislator is motivated by an ultimate secular purpose, the First Amendment forbids him or her from intentionally using state aid to religious institutions to advance that

secular purpose. For example, a legislator might well recognize that religion plays an important role in advancing the secular values of mental health, social stability and the transmission of ethical values, but the First Amendment would not countenance legislative provision of direct subsidies to religious groups merely because of that ultimate "secular purpose." Stone v. Graham, 449 U.S. 39 (1980). Valid legislative findings that church attendance reduces juvenile delinquency and drug use could not justify provision of tax funds to induce such church attendance under the First Amendment or more precisely, clothe such grants with a valid "secular purpose."

Even under the more relaxed test of

purpose the Court has employed, however, the Minnesota statute fails, since its legislative history demonstrates that § 290.09 is designed to extend a primary benefit to parents of schoolchildren attending sectarian schools.

First, § 290.09 was amended to substantially enhance the value of the deduction to parents of sectarian school students precisely to replace aid in a different statute that had been struck down on Establishment Clause grounds. As originally enacted, § 290.09 granted a uniform deduction in the amount of $200 for tuition and transportation expenses of dependents attending elementary or secondary schools. 1955 Minn. Laws, ch. 741, § 1 (19). In 1976, the statute was amended by the addition of provisions restricting the geographical area in

which deductible expenses could be incurred, adding textbooks and instructional materials as deductible expenses, and increasing the amount of allowable deductions to their present limits of $500 and $700. 1976 Minn. Laws, ch. 37, § 1. The statute was further amended, two years later, by inclusion of a provision excluding deductions for expenses associated with extracurricular activities. 1978 Minn. Laws, ch. 766, § 3.

The amendments adopted in 1976 were introduced into the Minnesota Senate as S. F. 570 on February 24, 1975. 1975 Journal of the Senate 246. Introduction of the bill followed closely upon the decision of the Minnesota Supreme Court in MCLU v. State, 302 Minn. 216, 224 N.W.2d 355 (1974). That decision struck

down on Establishment Clause grounds a Minnesota statute, 1971 Minn. Laws, ch. 944, which provided an income tax credit for tuition and textbook expenses of schoolchildren attending Minnesota nonpublic schools. Not only did the legislature increase the amount of tuition expenses which could be deducted under § 290.09 following the Minnesota Court's decision, but it also included for the first time a deduction for textbooks and instructional materials. The statutory language defining permissible textbook deductions in § 290.09 was originally formulated in Chapter 944. Cf., 1971 Minn. Laws, ch. 944, § 1, and 1976 Minn. Laws, ch. 37, § 1.

The tax deduction provided by § 290.09 had been unavailable to taxpayers

claiming tax credits. 1971 Minn. Laws, ch. 944, § 2. The fact that deduction limits under § 290.09 were increased three-fold almost immediately after the tax credit was struck down reveals that § 290.09 was not "neutral" as respondents claim, but was (as amended) intended to do precisely what ch. 944 (invalid on Establishment Clause grounds) had done.[25] The true intent of the Minnesota legislature to aid religious schools, rather than the secular purpose of aiding education generally, is further demonstrated by its refusal to permit

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[25]The credit granted under Chapter 944, $100 per pupil for 1971, was generally comparable to the tax benefit subsequently granted taxpayers claiming full $500 and $700 deductions under the tax rates in effect for the 1976 tax year. See Minn. Stat. § 290.06, subd. 2c (1976).

aid to flow to non-religious schools when certain aid to all nonpublic schools was struck down on First Amendment grounds. In 1975, the same legislature which increased deduction limits under § 290.09 enacted a statute which, inter alia, provided instructional materials, textbooks, and auxiliary aids and services to nonpublic schools. 1975 Minn. Laws, ch. 396. The law was challenged, but upheld by a three-judge district court. MCLU v. Casmey, No. 3-76-8 (D. Minn., November 30, 1976) (Memorandum Opinion filed). On direct appeal to this Court, the matter was summarily remanded with instructions to re-examine the case in light of the intervening decision in Wolman v. Walter, supra. 433 U.S. 903 (1977). The district court subsequently struck down

the program as it applied to church-related schools, but left it intact as to non-religious schools benefitting under the program. MCLU v. Casmey, supra (November 1, 1977) (Memorandum Opinion and Order filed).

In the following session, the legislature quickly enacted a bill abruptly terminating the program, with a short, one year extension for schools with less than two hundred pupils enrolled. 1978 Minn. Laws, ch. 733. Although the program was originally enacted with the stated legislative purpose that educational benefits should be shared "equitably," and that parents should be permitted "freedom of choice" in education, 1975 Minn. Laws, ch. 396, § 1, the legislature's subsequent action reveals that it was principally the

advancement of religious schools that was the legislature's true intent and design. Like Minnesota's Wolman program, struck down in Casmey, the tax deduction under challenge in this case is not "religion-blind": its intended consequence is to provide a state subsidy to religious education.

III. MINNESOTA'S ATTEMPT TO PERMIT PARENTS TO DEDUCT PAYMENTS FOR TEXTBOOKS AND TRANSPORTATION AT SECTARIAN ELEMENTARY AND SECONDARY SCHOOLS VIOLATES THE ESTABLISHMENT CLAUSE.

Petitioners have demonstrated that Minnesota's tuition tax deduction acts as an unrestricted subsidy for sectarian education. Tax deductions for payments made in connection with textbooks and transportation raise slightly different issues since this Court has upheld statutes providing for the evenhanded

reimbursement of basic transportation costs and the loan of textbooks to children in both public and parochial schools. Everson v. Board of Education, supra; Board of Education v. Allen, supra. The textbook and transportation deductions here, however, violate the Establishment Clause because, lacking the safeguards of the benefits upheld in Everson and Allen, each poses an impermissible risk of advancing religious education.

A. The Textbook Deduction

In Board of Education v. Allen, supra, this Court upheld a New York statute which required local school boards to loan copies of textbooks being used in public schools to children enrolled in parochial schools. This Court stressed the fact that, on the very

sparse record in Allen, the textbooks had not been shown to be of potential use in furthering the religious mission of the school. The Court based its presumption of secularity concerning the textbooks in large part on the fact that they were chosen by secular authorities for use in secular schools. 392 U.S. at 244-45.[26] The textbook deductions at issue in this case lack the attributes of secularity which were present in Allen, and are invalid on four independent

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[26]The Court stressed the importance of the protective role played by the public school authorities:

> Absent evidence, we cannot assume that school authorities, who constantly face the same problem in selecting textbooks for use in the public schools, are unable to distinguish between secular and religious books or that they will not honestly discharge their duties under the law.

392 U.S. at 245.

grounds.

First, unlike Allen, textbooks under the Minnesota plan are purchased and provided for by the taxpayer rather than a state official. It is the taxpayer, as well, who determines which items are deductible under the terms of the statute, with no meaningful check or monitoring program undertaken by neutral state authorities. For all practical purposes, the sectarian school itself designates which textbooks are needed to supplement the educations of its pupils. See Rhode Island Federation of Teachers v. Norberg, 630 F.2d 855 (1st Cir. 1980).[27] Because these items are not selected from a list of textbooks approved

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[27]In upholding state funding for standardized tests in Wolman and Regan, the Court similarly stressed that the selection of testing materials was left

by ideologically neutral and disinterested state officials, as in Allen, they are not entitled to the Allen presumption of secular use. Instead, they are analytically indistinguishable from the "instructional materials and equipment" whose provision was invalidated in Meek v. Pittenger, supra, and Wolman v. Walter, supra, precisely because, inter alia, public school authorities played no role in their selection and the danger of diversion to religious use was substantial.[28]

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27 (continued)

to public authorities, not parochial schools. Wolman, 433 U.S. at 238-40; Regan, 444 U.S. at 654-56.

[28]Nor does the conclusory limitation in § 290.09 of deductible textbook expenses to only those items not "used in the teaching of religious tenets, doctrines or worship" cure these defects. This Court's precedents make

Second, and related to the first, unlike Allen, the Minnesota statute only provides deductions for books which are not also provided by the state to public schoolchildren. This is because Minnesota already has an Allen-type law requiring the provision of textbooks used in the public schools to nonpublic school pupils. Minn. Stat. § § 123.933 and 123.932, subd. 16. Accordingly, Minnesota provides an additional benefit under the challenged statute available only to nonpublic schoolchildren over and beyond what it already makes equally

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28 (continued)

clear that such formalistic assurances of secularity are not sufficient. Committee for Public Education v. Nyquist, 413 U..S. at 778; Wolman v. Walter, 433 U.S. at 249-50; Lemon v. Kurtzman, 403 U.S. at 618-19.

available to public and nonpublic schoolchildren alike. Such a benefit is not valid under Allen, and is unconstitutional under Lemon, Sloan, Nyquist. See also Members of the Jamestown School Committee v. Schmidt, 427 F. Supp. 1338 (D.R.I. 1977); Americans United for Separation of Church and State v. Benton, 413 F. Supp. 955 (D. Iowa 1975).

Third, the Minnesota plan does not confine itself to textbook deductions, but authorizes deductions for payments in connection with the provision of educational equipment and teaching aids.[29] As this Court noted in Meek v. Pittenger, 421 U.S. at 362-66, and

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[29]Instructions accompanying the 1978 and 1980 Minnesota Income Tax Form, used by taxpayers in preparing tax

reaffirmed in Wolman v. Walter, 433 U.S. at 248-51, state subsidization of aids and equipment in sectarian elementary and secondary schools creates an impermissibly high risk that the aid will be used in furtherance of the school's religious mission.

Fourth, the Minnesota statute contemplates tax deductions for books bought by parochial school students,

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29 (continued)

returns, advise, "If you have children attending a private or parochial school, you can include the amounts you spent for equipment and nonreligious instructional materials only if they are for use in a subject commonly taught in the public schools." See Appendix A infra. Respondent Allen has indicated in an internal memorandum distributed to Department of Revenue personnel that certain additional restrictions may apply to deduction of equipment costs, JA-17-22, but since taxpayers do not see this memorandum when preparing tax returns, it has no operative effect.

while, although the record is not completely clear on this point, it would appear that public schoolchildren are merely temporarily loaned their state-provided books. The identical discrimination between public and parochial school students was held unconstitutional in Public Funds for Public Schools v. Marburger, supra; see also Meek v. Pittenger, 421 U.S. at 362, n. 12.

In sum, the "textbooks" for which deductions may be taken under § 290.09 are selected by taxpayer-parents or sectarian schools without any meaningful check by ideologically neutral state officials; deductions are made available to parents of private school pupils on more favorable terms than to parents of public school pupils, and such items

include educational equipment as well as textbooks. For each of these reasons, Minnesota's textbook deduction plan falls far short of the minimum requirements of Allen and the Establishment Clause.

B. The Transportation Deduction

The Minnesota statute authorizes a deduction for transportation payments for parents of both public and private school students. Because other statutes make clear that school transportation, where provided, must be provided on an equal basis, the tax deduction for routine transportation expenses is analogous to the direct reimbursement plan upheld in Everson.[30]

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[30] See Minn. Stat. § 123.78.

However, the tax deduction statute goes further. It is not limited, as was the statute upheld in Everson, to transportation to and from school; it authorizes deductions for field trip transportation as well. (JA-19). As this Court held in Wolman v. Walter, supra, state subsidy of sectarian school field trip expenses creates an impermissible risk of aiding the school's religious mission. Since no mechanism exists to differentiate between constitutional and unconstitutional transportation deductions, the transportation deduction must be invalidated.[31]

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[31]Even were the Court to decide that the transportation deduction is not invalid because it covers field trip transportation, the question remains whether the transportation deduction is

31 (continued)

severable, assuming, as we have shown, that the tuition and textbook deductions are infirm. For the reasons set forth by the First Circuit in Rhode Island Federation of Teachers v. Norberg, 630 F.2d at 862-63, the transportation deduction should be held not severable. However, the Court may well choose to leave the question to the District Court. See Sloan v. Lemon, 413 U.S. at 825-26; Meek v. Pittenger, 421 U.S. at 349, n.2.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that the judgment of the Court of Appeals be reversed, and Minn. Stat. § 290.09, subd. 22, be declared invalid as an unconstitutional establishment of religion.

Respectfully submitted,

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[APPENDIX A]

FORM M-1

1980 MINNESOTA Income Tax Return

Before you begin, read "Use of Information" in the instructions.

Please Print or Type

Your Full First Name and Initial	Last Name(s)	Your Social Security Number	Check box and fill in name of Minnesota city or township where you lived in 1980 ☐ City ☐ Township
Spouse's Full First Name and Initial		Spouse's Social Security Number	County / Occupation Number: You / Spouse
Present Home Address (number and street, apartment number, or rural route)			Fill in your former name, address or marital status if changed since you sent in your 1979 return:
City, Town or Post Office	State	Zip Code	Date of change:

7 ☐ Check this box if you are married 8 ☐ Check this box if your spouse is filing a separate form

Check only if one of these applies: 9 ☐ Nonresident Full Year 10 ☐ Resident Part Year

STATE ELECTIONS CAMPAIGN FUND
Check a box for you and a box for your spouse. Dependents 18 and older who are not filing their own forms may also contribute by checking a box and signing below.

	Democratic Farmer-Labor	Independent Republican	American Party	Minor Party		General State Campaign Fund	No Contribution
You	11 ☐	14 ☐	17 ☐	20 ____	(Fill in the number from page 3 of the instructions)	23 ☐	26 ☐
Spouse	12 ☐	15 ☐	18 ☐	21 ____		24 ☐	27 ☐
Dependents 18 or older	13 ☐	16 ☐	19 ☐	22 ____		25 ☐	28 ☐

Staple a copy of your W-2 form here. Place your check here - please do not staple check.

		A Wife Only	B Husband, Joint Return or Single Person
1	Federal adjusted gross income (from line 31 of your Federal Form 1040 or line 11 of your Short Form 1040A. If you are not filing a Federal Return, read page 4 of the instructions)	1	
2	Federal income tax refunds you received in 1980	2	
3	Additions to your federal adjusted gross income (read instructions, page 4)	3	
4	Total (add lines 1, 2 and 3)	4	
5	Subtractions from your federal adjusted gross income (read instructions, page 5)	5	
6	Minnesota gross income (subtract line 5 from line 4)	6	
7	Federal income tax withheld from you or paid by you in 1980 (read instructions, page 6)	7	
8	Minnesota adjusted gross income (subtract line 7 from line 6)	8	
9	Total deductions (choose one method only and check the box) ☐ Standard deduction (to determine, read instructions, page 8) ☐ Itemized deductions (from line 37 of your Schedule A)	9	
10	Minnesota taxable income (subtract line 9 from line 8)	10	
11	Tax from table on page 21 of the instructions	11	
12	Total (add the amounts in columns A and B, line 11)	12	
13	Credits before tax (from line 32 on the back of this form)	13	
14	1980 income tax (subtract line 13 from line 12. Fill in this result or the amount from line 33 on the back of this form, whichever is smaller. If 13 is greater than 12, write "None.")	14	
15	Credits after tax (from line 41 on the back of this form)	15	
16	If line 15 is greater than line 14, subtract 14 from 15 and fill in result here. This is your refund.	16	
17	If you have a refund on line 16, you may donate $1 or more of your refund to the Minnesota Nongame Wildlife Fund. Fill in the amount here. This will reduce your refund.	17	
18	Subtract line 17 from line 16 and fill in **AMOUNT DUE YOU** (Read "When Will I Get My Refund" on page 16 of the instructions.)	18	
19	If you pay estimated tax, fill in the amount of your refund from line 18 that you want credited to your 1981 Estimated Tax, if any	19 ____	
20	If line 14 is greater than line 15, subtract 15 from 14 and **PAY THIS AMOUNT** (Make your check or money order out to: Commissioner of Revenue. Put your social security number on your check.)	20	

TAXPAYER—I declare under the penalties of perjury and criminal liability for willfully making a false return, that this return is true, correct and complete to the best of my knowledge and belief. I hereby confess judgment to the State of Minnesota for the amount of the tax shown due hereon, to the extent not timely paid. PREPARER—This return is true, correct and complete to the best of my knowledge and belief.

Sign Here

Your signature | Spouse's signature (if joint or combined return) | Date | ( ) Telephone number

Signature of preparer if not taxpayer | Address, City, State, Zip Code | Minn. I.D. or soc. sec. no. | ( ) Telephone number

MAIL TO: MINNESOTA INDIVIDUAL INCOME TAX ST. PAUL, MINNESOTA 55146

Itemized Deductions
Schedule A

Last Name	Social Security Number

1980

The kinds of expenses you can deduct, and the limits on how much you can deduct for certain expenses are explained in the section entitled "Deductions" in the instruction booklet.

Medical and Dental Expenses

1 Insurance premiums you paid for medical care 1
2 Medicine and drugs 2
3 Doctors, dentists, nurses, etc. . . . 3
4 Hospitals 4
5 Other (list - include hearing aids, dentures, eyeglasses, etc.)

_____ _____
_____ _____
_____ _____ 5

6 Total (add lines 1 through 5) Fill in here and on line 31 6

Taxes

7 Real estate. . . 7 _____
8 Property tax refund received in 1980. 8 _____
9 Balance (subtract line 8 from line 7). 9
10 State gasoline (read page 9 of the instruction booklet). 10
11 Sales (use federal sales tax tables) . 11
12 Minnesota car license (including wheelage tax) 12
13 Other (do not include income taxes)

_____ _____
_____ _____ 13

14 Total (add lines 9 through 13) Fill in here and on line 32 14

Interest Expense

Home loan
15 Mortgage 15
16 Contract for deed 16
17 Credit and charge cards 17
18 Other (list)

_____ _____
_____ _____
_____ _____
_____ _____ 18

19 Total (add lines 15 through 18) Fill in here and on line 33 19

Contributions

20 Cash contributions (for which you have receipts, cancelled checks, etc.) . . 20
21 Other cash contributions (list organizations and amounts)

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____ 21

22 Other than cash 22
23 Political contributions (read page 10 of the instruction booklet) . . . 23
24 Total (add lines 20 through 23) Fill in here and on line 34 24

Casualty or Theft Loss(es)

25 Casualty or theft loss(es) from line 37 of your federal Schedule A. Fill in here and on line 35 25

Miscellaneous Deductions

26 Union dues 26
27 Tax return preparation fee 27
28 Tuition, transportation, and nonreligious textbooks for dependents . . 28
29 Other (list)

_____ _____
_____ _____
_____ _____
_____ _____ 29

30 Total (add lines 26 through 29) Fill in here and on line 36 30

Total of All Itemized Deductions

31 Medical and dental 31
32 Taxes 32
33 Interest expense 33
34 Contributions 34
35 Casualty or theft loss(es) 35
36 Miscellaneous deductions 36
37 Total (add lines 31 through 36). Fill in total here and on line 9 of Form M-1 . 37

this booklet.

3) A political action committee or a committee for or against the passage of an amendment to the Minnesota Constitution.

Candidates For Minnesota State Offices

If you made a cash contribution to a Minnesota candidate for governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor or state legislature, you may only use your cash contribution to get a direct tax credit. Read the section titled Political Contribution Credit on page 14.

Other Contributions

If you gave money to the Democratic-Farmer-Labor party, Independent Republican party, or the American party or to a Minnesota candidate for the U.S. Senate or House of Representatives or to a candidate for election as a judge in Minnesota, you may use your contribution either as a credit or as a deduction.

If you are single or if you are married and only one spouse is filing a Minnesota return, you can deduct up to $100 of the amount you contributed. If you are married and both spouses are filing, you can divide the combined total of your political contributions between you in any amounts, but the total of that deduction can be no more than $200.

Fill in the amount of your deduction for political contributions on line 23 in the section titled Contributions on your itemized deduction form.

Casualty Or Theft Losses

If you had property that was stolen or damaged by fire, storm, tornado, flood, vandalism or other similar causes, you may be able to deduct part of your loss.

If you itemized deductions on your federal Form 1040, take the amount you listed on line 29 of your federal Schedule A and fill it in on line 25 of your Minnesota itemized deduction form.

If you did not itemize deductions on your federal return, follow these steps:

1) Add $100 to the amount of insurance reimbursement you received for the loss.
2) Subtract the result from step 1 from the actual cost or decrease in market value of the property, whichever is less.
3) Fill in the remainder on line 25 of your Minnesota Schedule A. Attach a sheet of paper to your return showing how you figured your loss.

You Cannot Deduct The Value Of:

Trees, shrubs or other vegetation damaged or destroyed by disease such as dutch elm disease or oak wilt disease.

Property mislaid or lost.

Articles damaged or destroyed by moths or termites.

Dishes or glassware broken by handling or by a family pet.

Expenses you had to pay as a result of the casualty or theft. For example, the cost of moving to or renting temporary quarters, and the cost of temporary lighting or fuel expenses.

Miscellaneous Deductions

Fill in the following types of expenses in the section titled Miscellaneous Deductions on your itemized deduction form.

Education Expenses For Your Job

You Can Deduct Expenses For:

Education that helps you keep or improve skills you must have in your present job, trade, business or profession.

Education that your employer said you must have, or that the law or regulations say you must have to keep your present salary, job or professional credentials.

Traveling, meals and lodging expenses while you are away from home to obtain the type of education described above. To determine your expenses, follow the same rules used for employee business expenses in your federal income tax instruction booklet.

You Cannot Deduct Expenses For:

Education needed to meet the minimum requirements for your job, trade, business or profession. For example, you cannot deduct the cost of your college or technical education unless that education is used to keep up or improve skills in your present job, trade or business.

Education that is part of a course of study that will lead to your getting a new job, an advancement, a new trade or business or a new profession.

Grade School And High School Expenses

You can deduct up to $500 of the expenses you paid for tuition, transportation, and nonreligious textbooks for each dependent child you have in grades kindergarten through six, and up to $700 for each dependent child you have in grades seven through twelve who attend school in Minnesota, North Dakota, South Dakota, Wisconsin or Iowa.

If you have children attending a private or parochial school, you can include the amounts you spent for equipment and nonreligious instructional materials only if they are used for a subject commonly taught in the public schools.

You Can Deduct:

Tuition the school charges for private tutoring or summer school classes.

Rental fees for musical instruments, but not the purchase price if you buy instead of rent.

Expenses for required supplies for courses such as shop, home economics and art.

Expenses for required clothing for physical education classes.

Expenses for driver's education if taken for course credit.

You Cannot Deduct:

Expenses for your child to attend such extracurricular activities as sports, music, drama or speech.

Expenses you paid for your children to attend nursery schools or pre-kindergarten classes, or to attend schools after they have graduated from high school.

Expenses for your children to attend schools operated for a profit. To determine if the school is operated for a profit, you can ask the school administration.

The cost of special uniforms for choir or for school.

The cost of driving your children to school yourself.

Adoption Expenses

You can deduct up to $1,250 for certain expenses you paid in connection with adopting a child.

You can deduct attorney fees, court costs, fees you paid to adoption agencies and fees paid to obtain documents required for the adoption.

If you paid adoption expenses for a child during more than one year, you must deduct the adoption expenses in the year that you paid them. The total deduction for all years can be no more than $1,250 for each child you adopted.

You cannot deduct as an adoption expense the cost of food, clothing, lodging or medical care you provided for the child. However, you may be able to take a dependent credit for the child even before the adoption is final. You may include the cost of food, clothing, lodging and medical care you provided to the child to determine if the child qualifies as your dependent. Read, "Credit for Your Dependents," on page 13.

If you paid for medical care for the child before the adoption was final, and if the child qualified as your dependent at that time, you can include the cost of that care as a medical expense in the section titled Medical and Dental Expenses on your itemized deduction form.

Other Miscellaneous Deductions

Types Of Expenses You Can Deduct:

Dues to unions, professional organizations, chambers of commerce.

Fees you paid to have someone prepare your tax return.

Fees you paid to employment agencies or others to get a job in your present occupation.

Cost of subscriptions to professional journals.

Cost of safety equipment, uniforms, supplies and tools you must have for your job. If a tool has a useful life of more than one year, divide the cost of the tool by the number of years it is expected to last. List the result as your deduction.

Cost of business entertainment.

Necessary expenses in connection with earning or collecting income that is taxed by Minnesota, if you have not deducted the expenses elsewhere on your form.

Safety deposit box rental fees.

You Cannot Deduct:

Cost of going to and from work.

Cost of entertaining friends.

Cost of funerals, burial expenses and cemetery lots.

Cost of home repairs.

Losses from the sale of your home or your home furniture, personal automobile or other personal belongings.

Penalties, fines, or similar assessments.

LINE 10 YOUR MINNESOTA TAXABLE INCOME

Subtract your standard deduction or the total of your itemized deductions on line 9 from the amount on line 8. Fill in the result on line 10. This is your Minnesota taxable income.

LINE 11 AMOUNT FROM TAX TABLE

Turn to the tax table on page 21 of this booklet.

If the amount on line 10 of your form is less than $20,000, read down the columns in the table to find the bracket which includes your income from line 10. Fill in on line 11 the tax shown to the right of your income bracket.

If the amount on line 10 is $20,000 or more, use the tax rate schedule on the bottom of page 21 to determine your tax. Fill in the amount of your tax on line 11.

If you listed an amount for severance pay on line 5, or if you received a lump-sum distribution for pensions, follow the instructions below to determine the tax on those items. Add the result to the amount from the tax table and fill in the total on line 11.

Tax on severance pay.

1) Divide the amount of your severance pay by 10.
2) Turn to the tax table and find the tax due on the amount you determined in step 1.
3) Multiply the amount from the tax table by 10.

Add the result from step 3 to the amount of tax for the income you listed on line 10 of your form, and list the total on line 11.

Lump-sum distribution. If you used the 10-year averaging method to determine the federal tax due, use Schedule M-1LS to figure the amount of Minnesota tax to include on line 11.

LINE 12 COMBINED RETURN

If you are married and filing a combined return, add together the tax amounts in columns A and B on line 11. Fill in the total on line 12. This amount is your combined tax.

DETERMINING YOUR CREDITS

The next step is to determine whether you are eligible to take any credits.

A credit is something you subtract from your tax in order to reduce the amount you have to pay. A credit is like a deduction, except that you subtract a deduction from your income, and you subtract a credit from your tax.

There are two types of credits.

Credits before tax. You must subtract these credits from the tax you put on line 12 in order to determine the amount of your 1980 income tax. Credits before tax only reduce or

FORM M-1

1978 MINNESOTA Income Tax Return

Please Print or Type

Last Name(s)	Your First Name and Initial	Your Social Security Number	Fill in your former name, address or marital status if different from your 1977 return.
	Spouse's First Name and Initial	Spouse's Social Security Number	Date of change:
Present Home Address (number and street, apartment number, or rural route)			Check box and fill in name of Minnesota city or township where you lived in 1978. ☐ City ☐ Township
City, Town or Post Office	State	Zip Code	County / Occupation Number ___ ___ ___ You ___ Spouse

STATE ELECTIONS CAMPAIGN FUND

If you want $1 from taxes already collected to go into this fund, check one of these boxes. If you are married and both of you are filing on this form, you may each check one box. Dependents 18 and older may each check one box if they are not filing separate forms. If you have more than one dependent 18 or older, see page 3 of the instruction booklet. Dependents making this checkoff must sign here:

	Democratic Farmer-Labor	Independent Republican	American Party	General State Campaign Fund	Minor Party
You	7 ☐	10 ☐	13 ☐	16 ☐	19 ___
Spouse	8 ☐	11 ☐	14 ☐	17 ☐	20 ___
Dependents 18 or older	9 ☐	12 ☐	15 ☐	18 ☐	21 ___

(Fill in the number from the list on page 3 of the instruction booklet)

Attach the State Copy of your W-2 form here. Place your check here - please do not staple check.

Check this box if you are married 22 ☐ Check this box if your spouse is filing a separate form 23 ☐

		A Wife Only	B Husband, Joint Return or Single Person
1 Federal adjusted gross income (from line 31 of your Federal Form 1040 or line 10 of your Short Form 1040A)	1		
2 Federal income tax refunds you received in 1978	2		
3 Additions to your federal adjusted gross income	3		
4 Total (add lines 1, 2 and 3)	4		
5 Subtractions from your federal adjusted gross income	5		
6 Minnesota gross income (subtract line 5 from line 4)	6		
7 Federal income tax withheld from you or paid by you in 1978	7		
8 Minnesota adjusted gross income (subtract line 7 from line 6)	8		
9 Total deductions (choose one method only and check the box) ☐ Standard deduction (to determine, see page 8 of the instruction booklet) ☐ Itemized deductions (from line 35 of your Schedule A)	9		
10 Minnesota taxable income (subtract line 9 from line 8)	10		
11 Tax from table on page 21 of the instruction booklet	11		
12 Total (add the amounts in columns A and B, line 11)	12		
13 Credits before tax (from line 29 on the back of this form)	13		
14 1978 income tax (subtract line 13 from line 12. If line 13 is greater than 12, write None)	14		
15 Credits after tax (from line 35 on the back of this form)	15		
16 If line 14 is greater than line 15, subtract 15 from 14 and **PAY THIS AMOUNT** (Make your check or money order out to: Commissioner of Revenue. Put your social security number on your check.)	16		
17 If line 15 is greater than line 14, subtract 14 from 15 and fill in **AMOUNT OF REFUND**	17		
18 If you pay estimated tax, fill in the amount of your refund from line 17 that you want credited to your 1979 Estimated Tax, if any 18 ___			

Mail to:
Minnesota
Individual Income Tax
Centennial Office Bldg.
St. Paul, Minn. 55145

TAXPAYER—I declare under the penalties of perjury and criminal liability for willfully making a false return, that this return is true, correct and complete to the best of my knowledge and belief. I hereby confess judgement to the State of Minnesota for the amount of the tax shown due hereon, to the extent not timely paid. PREPARER— This return is true, correct and complete to the best of my knowledge and belief.

Sign Here

Your signature _____ Telephone Number _____

Spouse's signature (If joint or combined return, both must sign) _____

Signature of preparer if not taxpayer _____ Telephone Number _____

Address, City, State, Zip Code _____ Minn. Ident. No. or Soc. Sec. No. _____

Schedule A

Itemized Deductions

1973

Last Name | Your Social Security Number

The kinds of expenses you can deduct, and the limits on how much you can deduct for certain expenses are explained in the section entitled "Deductions" in the instruction booklet.

Medical and Dental Expenses

1 Payments for medical care insurance	
2 Medicine and drugs	
3 Doctors, dentists and nurses	
4 Hospital expenses	
5 Other (list) _____	
_____	
_____	
6 Total (add lines 1 through 5) Fill in here and on line 29	

Taxes

7 Real estate tax _____	
8 Property tax refund received in 1978 _____	
9 Balance (subtract line 8 from line 7)	
10 Minnesota gas tax (use federal gas tax tables)	
11 Sales tax (use federal sales tax tables)	
12 Minnesota car license (including wheelage tax)	
13 Other (do not include income taxes)	
_____	
_____	
14 Total (add lines 9 through 13) Fill in here and on line 30	

Interest Payments

15 Interest on home mortgage	
16 Charge account interest	
17 Other (list) _____	
_____	
_____	
_____	
18 Total (add lines 15 through 17) Fill in here and on line 31	

Contributions

19 Cash contributions (total from receipts, cancelled checks or other records)	
20 Other cash contributions (list organizations and amounts)	
_____	
_____	
21 Contributions other than cash	
22 Political contributions (read page 10 of the instruction booklet)	
23 Total (add lines 19 through 22) Fill in here and on line 32	

Casualty or Theft Loss(es)

24 Casualty or theft loss from line 37 of your federal Schedule A. Fill in here and on line 33	

Miscellaneous Deductions

25 Union dues	
26 Tax return preparation fee	
(27) Other (list) _____	
_____	
_____	
_____	
_____	
28 Total (add lines 25 through 27) Fill in here and on line 34	

Total of All Itemized Deductions

29 Medical and dental expenses	
30 Taxes	
31 Interest payments	
32 Contributions	
33 Casualty or theft loss(es)	
34 Miscellaneous deductions	
35 Total (add lines 29 through 34) Fill in total here and on line 9 of Form M-1	

Casualty Or Theft Losses

If you had property that was stolen or damaged by fire, storm, tornado, flood, vandalism or other similar causes, you may be able to deduct all or part of your loss.

If you itemized deductions on your federal Form 1040, take the amount you listed on line 37 of your federal Schedule A and fill it in on line 24 of your Minnesota itemized deduction form.

If you did not itemize deductions on your federal return, you will have to get a set of instructions for the federal Form 1040. Determine the amount of your loss by following the rules used for theft or casualty deductions in the federal instruction booklet.

Fill in the amount you can deduct in the section entitled Casualty or Theft Loss(es) on your itemized deductions form, and attach a separate sheet of paper to your form showing your computations.

You Cannot Deduct The Value Of:

Trees, shrubs or other vegetation damaged or destroyed by disease such as dutch elm disease or oak wilt disease.

Property mislaid or lost.

Articles damaged or destroyed by moths or termites.

Dishes or glassware broken by handling or by a family pet.

Damage or losses to business property located outside of Minnesota.

Expenses you had to pay as a result of the casualty or theft. For example, the cost of moving to or renting temporary quarters, and the cost of temporary lighting or fuel expenses.

Miscellaneous Deductions

Fill in the following types of expenses you paid in the section entitled Miscellaneous Deductions on your itemized deduction form.

Education Expenses For Your Job

You Can Deduct Expenses For:

Education that helps you keep or improve skills you must have in your present job, trade, business or profession.

Education that your employer said you must have or that the law or regulations say you must have to keep your present salary, job or professional credentials.

Traveling, meals and lodging expenses while you are away from home to obtain the type of education described above. To determine your expenses follow the same rules used for employee business expenses in your federal income tax instruction booklet.

You Cannot Deduct Expenses For:

Education needed to meet the minimum requirements for your job, trade, business or profession. For example, you cannot deduct the cost of your college or technical education unless that education is used to keep up or improve skills in your present job, trade or business.

Education that is part of a course of study that will lead to your getting a new job, an advancement, a new trade or business or a new profession.

Grade School And High School Expenses

You Can Deduct:

You can deduct up to $500 of the expenses you paid for tuition, transportation, and nonreligious textbooks for each dependent child you have in grades kindergarten through six, and up to $700 for each dependent child you have in grades seven through twelve who attend school in Minnesota, North Dakota, South Dakota, Wisconsin or Iowa.

If you have children attending a private or parochial school, you can include the amounts you spent for equipment and nonreligious instructional materials only if they are for use in a subject commonly taught in the public schools.

You Cannot Deduct:

Expenses for your child to attend such extracurricular activities as sports, music, drama, speech, or driver's education.

Expenses you paid for your children to attend nursery schools or pre-kindergarten classes, or to attend schools after they have graduated from high school.

Expenses for your children to attend schools operated for a profit. To determine if the school is operated for a profit you can ask the school administration.

Adoption Expenses

You can deduct up to $1,250 for certain expenses you paid in connection with adopting a child.

You can deduct attorney fees, court costs, fees you paid to adoption agencies and fees paid to obtain documents required for the adoption.

If you paid adoption expenses for a child during more than one year, you must deduct the adoption expenses in the year that you paid them. The total deduction for all years can be no more than $1,250 for each child you adopted.

You cannot deduct as an adoption expense the cost of food, clothing, lodging or medical care you provided for the child. However, you may be able to take a dependent credit for the child on the back of your income tax form even before the adoption is final. You may include the cost of food, clothing, lodging and medical care you provided to the child to determine if the child qualifies as your dependent.

If you paid for medical care for the child before the adoption was final, and if the child qualified as your dependent at that time, you can include the cost of that care as a medical expense in the section entitled Medical and Dental Expenses on your itemized deductions form.

Other Miscellaneous Deductions

Types Of Expenses You Can Deduct:

Dues to unions, professional organizations, chambers of commerce.

Fees you paid to have someone prepare your tax return.

Fees you paid to employment agencies to get a job.

Cost of subscriptions to professional journals.

Cost of safety equipment, uniforms, supplies and tools you must have for your job. If a tool has a useful life of more than one year, divide the cost of the tool by the number of years it is expected to last. List the result as your deduction.

Cost of business entertainment.

Necessary expenses in connection with earning or collecting income that is taxed by Minnesota, if you have not deducted the expenses elsewhere on your form.

You Cannot Deduct:

Cost of going to and from work.

Cost of entertaining friends.

APPENDIX B

Tax benefits under the statute flowing to parents of children in public and private nonsectarian schools and benefits flowing to parents of children in sectarian schools can be calculated as follows:

A. Data relating to income tax deductions under § 290.09.

1. 3,281 pupils were enrolled in nonpublic elementary and secondary schools considering themselves nonsectarian in 1978-1979. (JA-26).

2. Total payments to all Minnesota public school districts as tuition charges, including the 79 students possibly assessed tuition defined in the ordinary

sense for the 1978-1979 school year was $2,005,142. (JA-38). Total fees collected for items characterizable as textbooks or transportation for the same period was $907,204. (JA-38).

3. The amount of dollars deducted by reason of § 290.09 for the 1978 tax year is estimated at $19,268,489. Minnesota Department of Revenue, Research Office, Individual Income Sample: Tax Years 1978 and 1980, Individual Income Tax Sample: Tax Years 1978 and 1980, at 50 (July, 1982).

B. CALCULATIONS

	Calculations	Result
1.	3,281 x $700 = $2,296,700	Maximum Dollars Deducted for School Expenses at Nonpublic, Nonsectarian Schools.
2.	$2,005,142 + $907,204 = $2,912,346	Total Payments to Minnesota School Districts Potentially Available for Deduction.
3.	$2,296,700 + $2,912,346 = $5,209,046	Maximum Dollars Deducted Nonsectarian School Expenses.
4.	$19,268,489 - $5,209,046 = $14,059,443	Minimum Dollars Deducted for Sectarian School Expenses.
5.	$14,059,443 ÷ $19,268,489 = 73%	Minimum Proportion of Dollars Deducted for Sectarian School Expenses.

6. $5,209,046 ÷
$19,268,489 = 27%

Maximum Proportion of Dollars Deducted for Public and Private Nonsectarian School Expenses.